

# WILLKIE FARR & GALLAGHER LLP

333 Bush St  
San Francisco, CA 94104  
Tel: 415 858 7400  
Fax: 415 858 7599

July 30, 2024

**VIA ECF**

Hon. Katherine Polk Failla  
United States District Court  
Southern District of New York  
Thurgood Marshall  
United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *GEM Yield Bahamas Limited, et al. v. Mullen Technologies, Inc., et al.*, 1:24-cv-01120-KPF

To the Honorable Katherine Polk Failla:

We write with respect to the continuing efforts of Petitioners GEM Global Yield LLC SCS and GEM Yield Bahamas Limited (“GEM”) to secure compliance with the now-confirmed Interim Measures Award. *See* ECF 85 (the “Confirmation Order”). We are mindful that the Court does not expect GEM to submit a responsive submission regarding the pending Order to Show Cause, ECF 107, and GEM does not do so here. Rather, GEM respectfully updates the Court with new facts and information following Mullen Automotive’s response to the OSC filed on July 8, 2024.

First, Mullen Automotive has not appealed the Confirmation Order and it is now final. The Confirmation Order was immediately appealable. 9 U.S.C. § 16(a)(1)(D). Because the Confirmation Order was issued on June 11, 2024, any notice of appeal was due to be filed within 30 days—i.e., by July 11, 2024. Fed. R. App. Proc. 4(a)(1)(A). Mullen Automotive has not appealed the Confirmation Order and it cannot now do so. “The requirement of filing a timely notice of appeal is mandatory and jurisdictional.” *Bowles v. Russell*, 551 U.S. 205, 209 (2007) (cleaned up).

Second, Mullen Automotive has successfully completed a number of steps it described as conditional and uncertain in its July 8, 2024 response to the Court’s OSC. *See* ECF 93 at 7-9; ECF 94. This includes successfully obtaining shareholder approval for the ELOC Transaction and Note Transaction described in that submission. *See* July 12, 2024 Mullen Automotive 8-K available at <https://www.sec.gov/edgar/browse/?CIK=1499961>. Mullen Automotive has also received at least \$10.5

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 July 30, 2024

million in funds from those transactions. *Id.* And on July 26, 2024, Mullen Automotive filed a Form S-1 for the sale of up to 85 million shares. *See* July 26, 2024 Mullen Automotive S-1 available at <https://www.sec.gov/edgar/browse/?CIK=1499961>.

Third, despite claiming that it “desire[d] to ‘rectify its lack of compliance’” with the Court’s Orders, ECF 93 at 12 & ECF 94 at ¶ 20, it appears that Mullen Automotive has not taken any steps over the last three weeks to do so. Mullen Automotive has certainly not affirmatively disclosed any such steps to either the Court or to GEM. On July 25, counsel for GEM asked for an “update on the steps Mullen Auto has taken to rectify its lack of compliance with Court’s orders regarding the Interim Measures Award.” *See* Exhibit A. Mullen Automotive’s response provided no update, described no additional steps taken (except, maybe, that it is “still exploring” the option of escrowing shares) and notably avoided answering any of the specific questions posed. *Id.* In short, Mullen Automotive has not described any effort to even begin to come into compliance with the Court’s orders.

\* \* \*

GEM is entirely dependent upon this Court to ensure that the security it was supposed to have received via the Interim Measures Award—\$24,114,921 placed in escrow by Mullen Automotive by March 9, 2024—does not become a dead-letter. Nearly *five months* have elapsed since March 9—and seven weeks since the Confirmation Order—and Mullen Automotive has still not complied with its obligations. Not even in part. Mullen Automotive has raised millions of dollars and put not a dime of that in escrow; it has not even set up a joint escrow account. Even while the Court continues to consider the OSC, it can issue specific directions to Mullen Automotive such as requiring periodic compliance updates, imposing a date certain for creation of the joint escrow account, and requiring partial deposits in the escrow account. GEM welcomes whatever concrete steps the Court decides is appropriate to order of Mullen Automotive in this regard. GEM respectfully implores the Court to do so without delay.

Respectfully submitted,

/s/ Jonathan A. Patchen

Jonathan A. Patchen

CC: All Counsel (via ECF)